

Department of Veterans Affairs

§ 21.4134

not earlier than the date the change, correction or modification was made by the service department.

(Authority: 38 U.S.C. 3462(b), 3501(d))

(h) *Individuals in a penal institution.* If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.3132 (a) or (b) or § 21.5139, the rate will be increased or benefits will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program, or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(i) *Service Members Occupational Conversion and Training Act of 1992.* If the veteran's or eligible person's educational assistance has been discontinued because the veteran or eligible person is training under a job training program for which benefits are payable to his or her employer under the Service Members Occupational Conversion and Training Act, VA will determine the date upon which educational assistance may be resumed as follows.

(1) When the veteran or eligible person is pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the day following that date.

(2) When the veteran or eligible person is not pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the earliest date otherwise provided by this section, but not before the day following the last date for which benefits are payable under that Act.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

(j) [Reserved]

[31 FR 6774, May 6, 1966, as amended at 39 FR 43220, Dec. 11, 1974; 41 FR 47929, Nov. 1, 1976; 46 FR 62060, Dec. 22, 1981; 48 FR 37977 and 37978, Aug. 22, 1983; 49 FR 5113, Feb. 10, 1984; 50 FR 48581, Nov. 26, 1985; 51 FR 16318, May 2, 1986; 54 FR 28677, July 7, 1989; 57 FR 40614, Sept. 4, 1992; 61 FR 6782, Feb. 22, 1996; 61 FR 26113, May 24, 1996]

§ 21.4133 Notification of suspension or discontinuance.

(a) *Presuspension notice.* Not less than 30 days before the Director of a Department of Veterans Affairs facility acts to make a mass suspension of payments of educational assistance allowance under § 21.4134(c) he or she shall send written notice to each affected veteran or eligible person. The notice:

(1) Shall state the Director's intent to suspend payments unless the educational institution takes corrective action;

(2) Shall give the Director's reasons for suspending payments; and

(3) Shall state the date on which the Director intends to suspend payments.

(b) *Notice of suspension and discontinuance.* When the Department of Veterans Affairs suspends or discontinues payment to any veteran or person under § 21.4134(b) or § 21.4135, the Department of Veterans Affairs shall send written notice of the suspension or discontinuance to the veteran or eligible person. The notice:

(1) Shall state the reasons for the suspension or discontinuance of payments, and

(2) Shall notify the veteran or eligible person that he or she has a right:

(i) To a hearing, and

(ii) To present evidence why payments should not be discontinued or suspended.

(Authority: 38 U.S.C. 3690(b))

[49 FR 5113, Feb. 10, 1984]

EFFECTIVE DATE NOTE: At 63 FR 35831, July 1, 1998, § 21.4133 was removed, effective July 31, 1998.

§ 21.4134 Suspension and discontinuance.

(a) *Suspension and discontinuance despite course approval.* Even though a State approving agency has approved a course offered by a school, the Director of the Department of Veterans Affairs facility of jurisdiction:

(1) May suspend payment of educational assistance allowance to any or all veterans and eligible persons enrolled in the course, and

(2) After following the procedures in § 21.4207 may discontinue payment of educational assistance to any or all

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veterans and eligible persons enrolled in the course.

(Authority: 38 U.S.C. 3690)

(b) *Evidence requirements for individual suspensions.* The Director of the Department of Veterans Affairs facility of jurisdiction may suspend or discontinue payments of educational assistance allowance to a veteran or eligible person, even if the Director continues payment to other veterans or eligible persons enrolled in the course. Before the Director can do this, he or she must have evidence showing either that:

(1) The program of education or any course in which the veteran or eligible person is enrolled fails to meet any of the requirements of chapter 1606 of title 10 U.S.C. or chapter 30, 32, 34, 35 or 36 of title 38 U.S.C., or

(2) The educational institution offering the veteran's or eligible person's course has violated or failed to meet any of the requirements of chapter 1606 of title 10 U.S.C. or chapter 30, 32, 34, 35 or 36 of title 38 U.S.C., and

(3) The violation or failure results in erroneous payment of educational assistance to the veteran or eligible person.

(Authority: 38 U.S.C. 3690(b))

(c) *Evidence requirements for mass suspension of payments.* Before suspending payments to all veterans and eligible persons enrolled in a course the Director must have evidence to support the suspension. The evidence must show that a substantial pattern of veterans and eligible persons enrolled in the course are not entitled to the educational assistance they are receiving because:

(1) One or more of the course approval requirements of chapter 36, title 38 U.S.C. are not met, or

(2) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of Chapter 1606 of Title 10 U.S.C. or Chapter 30, 32, 34, 35 or 36 of Title 38 U.S.C.

(Authority: 10 U.S.C. 16136, 38 U.S.C. 3034, 3690(b))

(d) *Notification.* (1) The Director may suspend educational assistance allow-

ance as provided in this section only after:

(i) He or she notifies the State approving agency concerned and the educational institution in writing of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements.

(ii) The educational institution:

(A) Refuses to take corrective action, or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director); and

(iii) The Director notifies each veteran and eligible person as provided in § 21.4133.

(2) If an educational institution believes it cannot complete corrective action within 60 days, it may ask the Director for additional time (not to exceed 30 days) to take corrective action.

(e) *Action following suspension.* If following a suspension of payments the Director is convinced that the educational institution will not take corrective action and that the State approving agency will not disapprove the course, he or she will refer the facts to the facility Committee on Educational Allowances. See §§ 21.4207 and 21.4208.

(Authority: 38 U.S.C. 3690(b))

CROSS REFERENCE: *Overcharges—restrictions on enrollments.* See § 21.4202.

[49 FR 5113, Feb. 10, 1984, as amended at 51 FR 16316, May 2, 1986; 61 FR 20728, May 8, 1996]

EFFECTIVE DATE NOTE: At 63 FR 35831, July 1, 1998, § 21.4134 was removed, effective July 31, 1998.

§ 21.4135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance allowance will be as specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or eligible person.*

(1) If the veteran or eligible person receives an advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.